

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

	X
AXLETREE SOLUTIONS, INC.	:
	:
Plaintiff,	:
	Civil Action No.:1:19-cv-5736
v.	:
	:
KENNETH T. CUCCINELLI II, ACTING	:
DIRECTOR, UNITED STATES CITIZENSHIP	:
AND IMMIGRATION SERVICES	:
	:
Defendant(s).	:
	:
	X

COMPLAINT

Plaintiff Axletree Solutions, Inc. (“Axletree”) sought to hire three SWIFT Application Architects.¹ Axletree always requires such employees to have a bachelor’s degree in an academic field that would give the employee the necessary skills to be a SWIFT Application Architect and sought a visa under 8 U.S.C. § 1101(a)(15)(h)(1)(B) (“H1B Visa”) for such employees. However, Defendant (“the Agency”) denied Axletree’s request for a visa for two beneficiaries (Nazia Parveen and Tejas Prakash) and has delayed making a decision regarding a third beneficiary (Satish Reddy Panyala). Regarding the denials, the Agency found that Axletree’s proffered position did not qualify for an H1B Visa because (1) the evidence of record did not establish that a bachelor’s degree in a specific specialty is normally the minimum requirement for entry into the particular position; (2) the requirement of a bachelor’s degree or higher in a specific specialty is not common to the industry; (3) the position is not so complex or unique as to require a bachelor’s degree; (4) Axletree’s mandatory college degree requirement was

¹ These positions are in the field of information technology as described more fully herein.

supposedly insufficient to prove the position required a college degree; and (5) the knowledge required to perform the specified duties is not so specialized and complex that it can be performed only by someone with a degree in a specific specialty. However, the Agency's rationale is based on an unlawful application of the law and ignores the overwhelming evidence provided to rebut each of these assertions.

Additionally, the Agency's delay of the Panyala application for an H1B visa is unreasonable. Most notably, the Agency has fully adjudicated nearly identical applications for at least two applications that were filed at the same time. The Agency can make no plausible claim that the delay on adjudicating this application is reasonable when it has decided nearly identical applications weeks ago.

For the reasons below, this Court should (1) set aside the Agency's denials and remand them to the Agency with instructions to approve the visa petitions; (2) compel action on the pending H1B visa application; and (3) award Axletree's attorneys' fees and costs.

PARTIES

1. Plaintiff Axletree Solutions, Inc. is incorporated under the laws of New Jersey with its principal place of business in North Brunswick, New Jersey.
2. Defendant Ken Cuccinelli is the Acting Director of United States Citizenship and Immigration Services ("USCIS"). He is in charge of all adjudications and processing for visas or status under 8 U.S.C. § 1101(a)(15)(H).

VENUE AND JURISDICTION

3. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331. *Califano v. Sanders*, 430 U.S. 99, 106 (1977).

4. Under its federal question jurisdiction, this Court can hear claims under the Administrative Procedure Act (5 U.S.C. § 501, *et seq.*) (“APA”).
5. Under the APA, this Court can set aside final agency action and compel agency action. 5 U.S.C. § 706.
6. Under its federal question jurisdiction, this Court can also provide declaratory relief under 28 U.S.C. § 2201.
7. Venue is proper in this Court under 28 U.S.C. § 1331(e)(1)(A) because Axletree completed the H1B visa petitions, signed the H1B visa petitions, mailed the H1B visa petitions, received notices about the H1B visa petitions, and completed the responses to the requests for evidence in the Eastern District of New York. Such actions constitute a substantial part of the actions that form this claim. Further, the Agency does business in the Eastern District of New York.
8. No statute or regulation requires an administrative appeal in this case. Thus, Plaintiff has exhausted all administrative remedies or constructively exhausted all administrative remedies. *Darby v. Cisneros*, 509 U.S. 137 (1993).
9. USCIS’s denial of Plaintiff’s Form I129, Petition for Nonimmigrant Worker is a final agency action. 5 U.S.C. § 704.

LEGAL FRAMEWORK

H1B Visa Program

10. Congress allocates 85,000 visas a year to private companies to hire foreign national workers to fill “specialty occupations.” *See* 8 U.S.C. § 1184(g).
11. Specialty occupations are those that require, at a minimum, a bachelor’s degree or equivalent experience. *See* 8 U.S.C. § 1184(i).

12. Employers who seek to hire foreign nationals to fill specialty occupations must seek a visa under 8 U.S.C. § 1101(a)(15)(H)(i)(B) (“H1B Visa”).

13. The relevant regulation identifies the following as exemplar backgrounds for specialty occupations: “architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts.” 8 C.F.R. § 214.2(h)(2)(ii).

14. Employers start the H1B Visa application process by filing a labor condition application with the U.S. Department of Labor (“DOL”). 8 U.S.C. 1182(n). The employer provides

evidence regarding the position, experience, skill level, job duties, and pay for the position. *Id.*

15. Upon approval of the Labor Condition Application, DOL certifies that, by hiring the foreign national employee on terms identified in the Labor Condition Application, the employer will not adversely impact American workers’ pay and conditions.

16. The employer then signs the approved Labor Condition Application and agrees to submit to DOL’s enforcement, investigations, and administrative court system. *Id.* And only the employer that signs the Labor Condition Application is subject to DOL’s jurisdiction and only the employer is liable for any alleged violations. 8 U.S.C. § 1182(n).

17. After receiving an approved Labor Condition Application and signing it, employers then file an I-129, Petition for Non-Immigrant Worker on behalf of the foreign national employee with United States Citizenship and Immigration Services (“USCIS”).

18. USCIS then reviews the proposed specialty occupation’s job duties and determines whether they require “theoretical and practical application of a body of highly specialized knowledge” that is on a level associated with the attainment of a bachelor’s degree or equivalent experience. *See* 8 U.S.C. § 1184(i).

H1B Eligibility Criteria

19. USCIS is charged with determining only whether a proffered position is a “specialty occupation.”

20. Congress defined “specialty occupation” as a position that requires a certain level of education or experience:

(1) . . . the term “specialty occupation” means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 1101(a)(15)(H)(i)(b) of this title, the requirements of this paragraph, with respect to a specialty occupation, are—

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

8 U.S.C. § 1184(i).

21. USCIS has further interpreted these requirements in its regulations:

To qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A).

22. A petitioner need only satisfy one of these elements to demonstrate the position is a specialty occupation.

23. To determine whether a position is indeed a specialty occupation, USCIS often refers to the United States Department of Labor's Occupation Outlook Handbook ("OOH").

24. The Department of Labor regularly updates and supplements the OOH with ongoing surveys of each occupation's worker population and occupation experts. *See* <https://www.onetonline.org/help/onet/> (Last accessed April 16, 2019). The Department of Labor considers the O*NET program to be "the nation's primary source of occupational information."

Id.

25. Upon approval of the H1B Visa application, the employee may work for up to three years for the petitioning employer in the particular specialty occupation. 8 U.S.C. § 1184(g).

26. In addition to this statute and regulation, in the last three years, USCIS has created various substantive rules through sub-regulatory guidance with dubious legal authority.

One-Degree Rule

27. USCIS has created a One-Degree Rule.

28. Under the One-Degree Rule, USCIS refuses to find a "baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position" where the proffered position does not require one specific degree.

29. In other words, a proffered position can only satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A) if it requires one *specific* degree.

30. Various courts have identified this rule and rejected it:

[USCIS's] implicit premise that the title of a field of study controls ignores the realities of the statutory language involved and the obvious intent behind them. The knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.

31. *Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs.*, 839 F. Supp. 2d 985, 996–97 (S.D. Ohio 2012); *see also Tapis Int'l v. I.N.S.*, 94 F. Supp. 2d 172, 176 (D. Mass. 2000).

32. If a proffered position satisfies § 214.2(h)(4)(iii)(A), the proffered position is a specialty occupation; satisfying this regulation alone is dispositive of whether a proffered position is a specialty occupation.

33. The One-Degree Rule is *ultra vires* and arbitrary and capricious. It is further entitled to no deference.

Most, But Not All Rule

34. Similarly, USCIS has created a Most, But Not All Rule.

35. USCIS considers the OOH authoritative and dispositive.

36. The OOH separates occupations into five separate job zones. The job zones correspond with the overall experience, job training, and education required for entry into a particular occupation. *See Job Zone Procedures (available at*

https://www.onetcenter.org/dl_files/JobZoneProcedure.pdf (last visited April 16, 2019).

37. Relevant to specialty occupations, the OOH states that the education necessary to enter into an occupation in Job Zone Four as follows: “Most of these occupations require a four-year bachelor’s degree, but some do not.” *Id.* at 12.

38. The particular OOH entries on the O*Net then identify the percentages of employees in that field that have a four-year degree (and higher) versus those that do not.

39. USCIS, rather than considering the percentage of employers that require a bachelor's degree or more, seizes on the "some do not" language associated with all Job Zone Four positions and deems it binding. USCIS reasons that, because some positions do not require college degrees or more, the proffered Job Zone Four position cannot be a specialty occupation.

40. Under the Most, But Not All Rule, USCIS refuses to find a "baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position" where the OOH reports that most but not all positions require a bachelor's degree or higher in a specific occupation.

41. Thus, under this rule, a proffered position can only satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A) if it is in Job Zone Five.

42. If a proffered position satisfies § 214.2(h)(4)(iii)(A), the proffered position is a specialty occupation; satisfying this regulation alone is dispositive of whether a proffered position is a specialty occupation.

43. The Most, But Not All Rule is *ultra vires* and it is arbitrary and capricious.

FACTS

44. Axletree is a leading provider of software as a service ("SaaS") for bank communications and treasury automation solutions to banks and Fortune 500 corporations worldwide. Axletree, using various applications and SWIFT connectivity, provides a comprehensive, single window automated treasury and payments solutions to corporations and banks.

45. SWIFT is a messaging network that financial institutions use to securely transmit information and instructions through a standardized system of codes.

46. Axletree requires SWIFT Application Architects to perform a range of business analysis and programming duties.

47. SWIFT Application Architects provide information technology services including programming, systems analysis, engineering, technical design, development, installation, operations, documentation, technical support, user training, and other specialized services. The position specifically requires, *inter alia*, the use of a wide range of software, platforms, web services, and interface design. In addition, the position requires coding, design of segments of the online dashboard, database installation, analyzing data flow and the routing rules of the wire, error message handling, analysis of errors, and service verification development.

48. Axletree requires that all SWIFT Application Architect positions possess at least a Bachelor's degree in a related field (such as Computer Science, MIS, CIS, or Engineering) noting that in some instances, additional requirements such as an advanced degree and/or prior work experience are required due to the sophistication of a specific project or job duties.

49. Based on these job requirements, Axletree sought an H1B Visa on behalf of the potential employees.

50. As part of its labor condition application, Axletree identified the as falling within SOC Code 15-1199 – Computer Occupations, All Other. However, in its response to the Agency's request for evidence, Axletree provided further clarification that the position fell under SOC Code 15-1199.06 – Database Architects.

51. The O*Net Online describes this SOC Code for Database Architects as a Job Zone Four, meaning that "Most of these occupations require a four-year bachelor's degree, but some do not."

52. O*Net reports that the education level required for occupations that fall within this SOC Code require at least a bachelor's degree 87% of the time. (available at <https://www.onetonline.org/link/summary/15-1199.06> (last visited October , 2019)).

53. Axletree sought labor condition applications for the positions, and the Department of Labor certified the Labor Condition Applications.

54. Axletree then attached the certified labor condition applications to its Form I-129, Petitions for a Non-Immigrant Worker seeking an H1B Visa. Specifically, Axletree filed its petitions as follows: (1) Prakash Petition on April 1, 2019; (2) Praveen Petition on April 11, 2019; and (3) Panyala Petition on April 1, 2019.

55. Axletree's three petitions were selected in the FY 2019 H1B Visa lottery.

56. The Agency then requested additional evidence.

57. The requests for evidence sought additional evidence on every regulatory requirement, but they did not identify any specific evidence.

58. Axletree responded timely and provided additional evidence for all of its petitions.

59. The Agency then denied the Prakash Petition (August 27, 2019) and the Praveen Petition (September 16, 2019), finding that Axletree failed to satisfy any of the four regulatory requirements for demonstrating the position required a college degree. The Agency has yet to make a decision on the Axletree's third petition for Panyala.

60. Axletree will lose significant revenue without individuals to fill the SWIFT Application Architects positions without the beneficiaries, and it will be irreparably harmed.

61. Axletree will lose the H1B Visa numbers that it was accorded by being selected in the FY 2019 lottery. Those visa numbers may now be given away to other FY 2019 lottery winners. Because there is no guarantee that Axletree may be picked in the FY 2020 lottery, it is irreparably harmed by losing these visa numbers.

62. As of the date of this filing, the Panyala Petition has still not been adjudicated.

63. This case followed.

FIRST CAUSE OF ACTION
(APA - the Denial of the Prakash Petition is Arbitrary and Capricious)

64. Plaintiff re-alleges all facts herein.

65. USCIS's denial is a final agency action that aggrieved Plaintiff. 5 U.S.C. § 704.

66. USCIS's denial is based, in part, on its One Degree Rule and its Most, But Not All Rule.

67. USCIS's denial violates the APA because its bases—its One Degree Rule and its Most, But Not All Rule —are *ultra vires* and, therefore, the Denial is in excess of statutory jurisdiction, authority, or limit. 5 U.S.C. § 706(2)(C).

68. USCIS's denial violates the APA because its basis—its One Degree Rule and its Most, But Not All Rule —constitute legislative rules that did not go through notice and comment rulemaking and, therefore, the denials are without observance of a procedure required by law. 5 U.S.C. §§ 553, 706(2)(D).

69. USCIS's denial violates the APA because its basis—the One Degree Rule—is *ultra vires* and arbitrary and capricious. *Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs.*, 839 F. Supp. 2d 985, 996–97 (S.D. Ohio 2012); see also *Tapis Int'l v. I.N.S.*, 94 F. Supp. 2d 172, 176 (D. Mass. 2000).

70. USCIS's denial violates the APA because its basis—the Most But Not All Rule—is *ultra vires* and arbitrary and capricious.

71. USCIS's denial is arbitrary and capricious because it ignores the reference in the record to SOC Code 15-1199.06 that indicates “most” jobs in that category require a college degree.

72. USCIS's denial is arbitrary and capricious because it unlawfully ignores that Axletree normally requires a bachelor's degree in the listed areas for this position.

73. USCIS's determination that the Plaintiff's proffered position is not a "specialty occupation" is arbitrary and capricious.

74. Similarly, to the extent these rules are lawful, as applied, the denial is arbitrary and capricious. A final agency action is arbitrary and capricious where:

USCIS has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before USCIS, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

75. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it is based on the One Degree Rule, which is *ultra vires*, unlawful, and arbitrary and capricious.

76. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it is based on the Most, But Not All Rule, which is *ultra vires*, unlawful, and arbitrary capricious.

77. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it lacks reasoned decision making as it considered the evidence submitted individually and without reference to other portions of the record.

78. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it considered factors Congress did not intend USCIS to consider.

79. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it entirely failed to consider an important aspect of the problem.

80. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because its rationale runs counter to the evidence in the record.

81. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it ignored and dismissed with no basis expert letters offered in support of the petition.

82. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it is so implausible it cannot be the result of Agency expertise.

83. Finally, until Plaintiff acquires the certified administrative record, it will be unable to identify all claims of error; Plaintiff expressly reserves the right to make additional claims of error under the APA after production of the certified administrative record.

84. USCIS's denial is substantially unjustified and this Court should set it aside, remand the case to USCIS, declare Plaintiff's proffered position as a specialty occupation, instruct it to re-adjudicate the H1B Visa application without applying its One Degree Rule or its Most, But Not All Rule.

**SECOND CAUSE OF ACTION
(APA - the Denial of the Parveen Petition is Arbitrary and Capricious)**

85. Plaintiff re-alleges all facts herein.

86. USCIS's denial is a final agency action that aggrieved Plaintiff. 5 U.S.C. § 704.

87. USCIS's denial is based, in part, on its One Degree Rule and its Most, But Not All Rule.

88. USCIS's denial violates the APA because its bases—its One Degree Rule and its Most, But Not All Rule —are *ultra vires* and, therefore, the Denial is in excess of statutory jurisdiction, authority, or limit. 5 U.S.C. § 706(2)(C).

89. USCIS's denial violates the APA because its basis—its One Degree Rule and its Most, But Not All Rule —constitute legislative rules that did not go through notice and comment

rulemaking and, therefore, the denials are without observance of a procedure required by law. 5 U.S.C. §§ 553, 706(2)(D).

90. USCIS's denial violates the APA because its basis—the One Degree Rule—is *ultra vires* and arbitrary and capricious. *Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs.*, 839 F. Supp. 2d 985, 996–97 (S.D. Ohio 2012); *see also Tapis Int'l v. I.N.S.*, 94 F. Supp. 2d 172, 176 (D. Mass. 2000).

91. USCIS's denial violates the APA because its basis—the Most But Not All Rule—is *ultra vires* and arbitrary and capricious.

92. USCIS's denial is arbitrary and capricious because it ignores the reference in the record to SOC Code 15-1199.06 that indicates “most” jobs in that category require a college degree.

93. USCIS's denial is arbitrary and capricious because it unlawfully ignores that Axletree normally requires a bachelor’s degree in the listed areas for this position.

94. USCIS's determination that the Plaintiff's proffered position is not a “specialty occupation” is arbitrary and capricious.

95. Similarly, to the extent these rules are lawful, as applied, the denial is arbitrary and capricious. A final agency action is arbitrary and capricious where:

USCIS has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before USCIS, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

96. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it is based on the One Degree Rule, which is *ultra vires*, unlawful, and arbitrary and capricious.

97. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it is based on the Most, But Not All Rule, which is *ultra vires*, unlawful, and arbitrary capricious.

98. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it lacks reasoned decision making as it considered the evidence submitted individually and without reference to other portions of the record.

99. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it considered factors Congress did not intend USCIS to consider.

100. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it entirely failed to consider an important aspect of the problem.

101. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because its rationale runs counter to the evidence in the record.

102. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it ignored and dismissed with no basis expert letters offered in support of the petition.

103. USCIS's determination that the proffered position is not a specialty occupation is arbitrary and capricious because it is so implausible it cannot be the result of Agency expertise.

104. Finally, until Plaintiff acquires the certified administrative record, it will be unable to identify all claims of error; Plaintiff expressly reserves the right to make additional claims of error under the APA after production of the certified administrative record.

105. USCIS's denial is substantially unjustified and this Court should set it aside, remand the case to USCIS, declare Plaintiff's proffered position as a specialty occupation, instruct it to re-

adjudicate the H1B Visa application without applying its One Degree Rule or its Most, But Not All Rule.

**THIRD CAUSE OF ACTION
(APA -H1B Unreasonable Delay)**

106. Plaintiff re-alleges all facts herein.

107. The Agency has a duty to make a decision on the H1B Visa Application within a “reasonable time.” 5 U.S.C. § 555(b).

108. Courts often use the factors laid out in *Telecommunications Research & Action Ctr. v. FCC (“TRAC”)*, 750 F.2d 70 (D.C. Cir. 1984) to determine whether agency delays are reasonable under the APA. Those factors comprise:

(1) “the time an agency takes to make a decision should be governed by a ‘rule of reason’”; (2) “[t]he content of a rule of reason can sometimes be supplied by a congressional indication of the speed at which the agency should act”; (3) “the reasonableness of a delay will differ based on the nature of the regulation; that is, an unreasonable delay on a matter affecting human health and welfare might be reasonable in the sphere of economic regulation”; (4) “the effect of expediting delayed actions on agency activity of a higher or competing priority . . . [and] the extent of the interests prejudiced by the delay”; and (5) “a finding of unreasonableness does not require a finding of impropriety by the agency.”

Id. at 80. Each of these factors favors a finding that the Agency’s delay is unreasonable.

119. First, the Agency is not applying its rule of reason—first in, first out—because it has taken more than the mandated 30-days to adjudicate his application. Congress has indicated that all non-immigrant visa petitions should be decided within 30 days. 8 U.S.C. § 1571(b).

120. Congress has also expressed an intent to ensure American companies have no gaps in employment for key foreign national workers. Such intent is apparent in both the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), Public Law 105-277, div. C., tit. IV, 112 Stat. 2681 (1998), and the American Competitiveness in the Twenty-First Century Act of 2000, Public Law 1-6-131, 114 Stat. 1251, as amended by the 21st Century

Department of Justice Appropriations Authorization Act, Public Law 107-273, 116 Stat. 1758 (2002) (“AC21”). *See Sakthivel v. Cissna*, No. 18-3194, slip op. at 15-22 (D.S.C. Jul. 30, 2019).

This is a health and welfare regulation, not an economic regulation as it determines whether the beneficiary can remain and live in the United States. Without a decision, the beneficiary will be unable to plan for the future, obtain an immigrant visa, or plan to live a normal life. Even with a denial, the beneficiary would have time to prepare to leave the United States or seek additional status.

121. Expediting a decision would have no impact on competing priorities because it only takes the Agency 48 minutes on average to decide an H1B Visa petition filed on Form I-129. *See Proposed Rule, U.S. Citizenship and Immigration Services Fee Schedule*, 81 Fed. Reg. 26904, 26925 (May 4, 2016).

122. Further, the prejudice to Plaintiff and Panyala outweighs any harm to the Agency from expediting a decision because Panyala will run out of his current status. And the prejudice to Axletree is that it will lose the services of its employee for an indeterminate amount of time, and it will bear the cost of consular processing or filing a separate application in the future.

123. Finally, there is no need to find Agency impropriety in order to compel them to make a decision.

124. The Agency’s delay is unreasonable on the facts of this case and such analysis requires an in-depth assessment of the unique facts of this case to determine whether the Agency can demonstrate that such delay is reasonable.

125. The delay is substantially unjustified.

PRAYER FOR RELIEF

Plaintiff, therefore, prays that this Court enter the following relief:

1. Take jurisdiction over this case;
2. Declare USCIS's One Degree Rule unlawful or arbitrary and capricious;
3. Declare USCIS's Most, But Not All Rule unlawful or arbitrary and capricious;
4. Declare USCIS's denials in this case violative of the Administrative Procedure Act;
5. Remand these cases to USCIS with instructions to re-adjudicate in compliance with the above declarations within 15 calendar days;
6. Enter an order compelling adjudication of Panyala's H1B visa within 15 calendar days;
7. Grant all relief that is necessary and proper; and
8. Award attorneys' fees and costs under the Equal Access to Justice Act.

October 10, 2019

Respectfully submitted,

s/Bradley B. Banias
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Application for Pro Hac Vice Pending

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